

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

KIRK DAHL, et al.,)	
Individually and on Behalf of All Others)	
Similarly Situated,)	
)	
Plaintiffs,)	
)	No. 1:07-cv-12388-EFH
v.)	
)	
BAIN CAPITAL PARTNERS, LLC, et al.,)	
)	
Defendants.)	

**DEFENDANTS' MEMORANDUM IN FURTHER OPPOSITION
TO THE NEW YORK TIMES' MOTION TO INTERVENE AND UNSEAL
PLAINTIFFS' FIFTH AMENDED COMPLAINT**

ARGUMENT

In its motion to intervene, the New York Times asked the Court to unseal defendants' confidential, competitively-sensitive information by releasing the Fifth Amended Complaint and its associated "exhibits" to the public. On September 14, 2012, the Court denied the Times' request as to the documents cited in the Fifth Amended Complaint and ordered defendants to submit another brief concerning the redactions in the complaint, explaining how "the specific redacted material is" confidential and "important to their interests." (Mem. & Order at 6 [Dkt. 733].) Defendants had previously redacted portions of the Fifth Amended Complaint that contain information designated confidential under the Court-approved protective order. Plaintiffs never challenged any of those designations prior to this briefing, and defendants believed—and still believe—that the information that they previously redacted in the Fifth Amended Complaint is confidential.

Over the last three weeks, defendants undertook an extensive review of the Fifth Amended Complaint and re-assessed each of their proposed redactions in light of the Court's order. With the benefit of the Court's guidance, defendants now submit with this brief an updated and substantially reduced set of proposed redactions. This more limited set of redactions easily meets the standards identified by the Court by protecting defendants' interests in the confidentiality of their competitively-sensitive business information while at the same time allowing public access to the complaint. *See* Mem. & Order at 4 [Dkt. 733] (noting that the Court must weigh defendants' "private interests [in confidentiality] against the presumption of access in determining whether the redacted text of the Complaint shall remain sealed"); *Standard Inv. Chartered, Inc. v. Nat'l Ass'n of Secs. Dealers, Inc.*, 07 CIV. 2014 (SWK), 2008 WL 199537, at *16 (S.D.N.Y. Jan. 22, 2008) ("[W]holesale publication of motion papers is not

required if the papers quote from or contain references to confidential information.... [R]edaction is often a practical, narrowly tailored strategy for balancing the interest in public access and the interest of one or both parties in the confidentiality of sensitive information.”). Although defendants believe their initial proposed redactions were valid under the protective order, the current set of proposed redactions, if approved by the Court, will release most of the previously redacted information in light of the Court’s ruling that quotations from discovery material are subject to a presumption of public access. Defendants also believe that it would be better to make this material public than to engage in further litigation over the issue, possibly resulting in allegations being reported incorrectly and without the proper context.

As the Court requested, defendants with remaining redactions to the Fifth Amended Complaint are submitting a chart detailing each of those redactions and explaining why the redacted information is in fact confidential and how its disclosure would prejudice those defendants’ business interests. The chart also provides case support for each redaction. (*See* Ex. A.) In addition, defendants are submitting a copy of the Fifth Amended Complaint that highlights the confidential portions of that document that defendants believe should remain redacted (Ex. B); defendants propose that a final, redacted version of the Fifth Amended Complaint be filed once the Court rules on those redactions.

Dated: Boston, Massachusetts
October 5, 2012

Respectfully Submitted

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CERTIFICATE OF SERVICE

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/s/ Kevin M. McGinty
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